Regulatory Policy Affects Rural Development in Many Areas

Significant regulatory changes include transportation, telecommunications, air pollution, land use and natural resources, banking and finance, and other activities important to rural development.

In this section, we discuss regulatory changes that were announced or proposed in 1998 or early 1999, affecting transportation, telecommunications, air pollution, land use and natural resources, banking and finance institutions, and other aspects of rural development.

New Guidelines May Benefit Rural Air Service

Airline competition continues to be an important issue for the Department of Transportation (DOT). Last year, guidelines were proposed to shield small, startup airlines, which are important in many rural areas, from the predatory behavior of major carriers. The final version of these guidelines is expected later this year. DOT has also been investigating various competition-related practices at airports and among major airlines. For example, DOT is interested in determining whether airport landing fees and the spending practices of major carriers put small airlines at a competitive disadvantage.

Another important issue is whether major carriers use their control of airport gate leases and “slots” (rights to take off or land at a certain time) to stifle competition from smaller carriers. Providing more slots to smaller carriers might give rural customers better air service. However, if major carriers are forced to give up slots, some fear that competitive pressures may cause rural air service to suffer as major carriers concentrate service on the most profitable, well-traveled routes.

Among other Administration proposals designed to increase airline competition and boost service to rural airports is a plan to provide matching grants to small airports. Another proposal would make it easier for small airlines serving rural airports to connect, or “interline,” with flights on dominant hub carriers (something that would probably be strongly opposed by major carriers, especially if it entails a mandatory transfer of luggage and other services with smaller carriers).

These planned initiatives are part of a big aviation package in 1999 that includes reauthorization of the Federal Aviation Administration (FAA) and multiyear funding of the $1.6 billion (1999) Airport Improvement Program, which finances airport capital improvements. Although specific details are still being worked out, one avenue for encouraging competition may be available through a change in the “passenger-facility charge,” which is a fee collected by airports from air travelers (and is currently set at $3 per airport and capped at $12 per round-trip ticket). *[Dennis Brown, 202-694-5338, dennisb@econ.ag.gov]*

Railroad Consolidations Attract Regulators’ Attention

Disruption of rail service from railroad consolidations has become an issue for agriculture and other rail-dependent industries as many bulk commodities and manufactured goods are moved by rail. Traffic along the rail network was severely disrupted in mid-1997 and 1998 when the largest rail freight company, Union Pacific, had difficulties in absorbing operations of the Southern Pacific railroad, with which it merged in 1996. Although the long-term economic effects of consolidations in the rail freight industry remain unclear, service was severely disrupted in the short term when congestion on rail routes, initially centered in Texas, quickly spread to other States. Industries that have been affected include chemical, automobile, agriculture, and most other bulk commodities. Changing trade flows due to the North American Free Trade Agreement (NAFTA) have also created transportation bottlenecks along the U.S.-Mexico border, which have disrupted rail service, prompting Congress to provide $700 million for border projects and major road corridors for north-south trade. As shippers have tried to shift to other transportation modes, many trucking operations have been unable to keep up with the growing demand for their services, further tying up the Nation’s rural transportation freight network. Throughout this period, the Surface Transportation Board (STB), the Federal agency that oversees all mergers in the rail freight industry, has monitored the situation closely and issued rulings addressing the rail bottleneck.

In mid-1998, the STB approved the purchase of the Consolidated Rail Corporation (commonly referred to as Conrail) by Norfolk Southern and CSX railroads. This merger occurred despite rail traffic disruptions that resulted from the Union Pacific-Southern Pacific merger and despite concerns about lack of competition in grain transport arising from the 1995 merger of the Burlington Northern and Santa Fe lines. The Conrail breakup is not expected to seriously hurt competition in rail service because bulk commodities, except for coal, have not traditionally moved in large volume on Conrail's routes. Water and truck shipments compete on some Conrail routes, and past mergers have shown that these transportation modes, when used together, can provide effective long-haul competition for rail service. As of this writing, the effect on rural areas of recent rail disruptions associated with the Conrail breakup is still unclear.

To avoid traffic disruptions like those following the Union Pacific-Southern Pacific merger, the STB will closely monitor the situation, maintaining weekly reports on rail congestion in former Conrail railyards. The STB also has frozen rail shipping rates for 3 years for some shippers and has taken steps to ensure that some smaller lines do not lose access to the new network. These provisions may provide some relief to agricultural and other bulk commodity shippers.

Continuing consolidations in the rail freight industry should add to the fortunes of "small railroads" (railroads with 1995 annual revenues less than $255.9 million). Since the railroad industry was deregulated in 1980, small railroads have been established in many rural areas, helping offset some of the negative effects of mergers, while helping many smaller communities to continue to be served by rail service in the face of a rail abandonment. Federal funding for the establishment of small railroads has been available through DOT's Local Rail Freight Assistance program (although no new funding was made available in fiscal year 1999). *[Dennis Brown, 202-694-5338, dennisb@econ.ag.gov]*

Further Legal and Regulatory Development of the Telecommunications Act

Three years after the Telecommunications Act was enacted into law, telecommunication company mergers and legal challenges to regulations continue to dominate the industry's news. One legal action, the Supreme Court's decision on January 25, 1999, to overturn a lower court decision, may lead, in addition to the debate over revisiting the 1996 Act, to a battle over the reauthorization of the Federal Communications Commission (FCC). The decision resolved a turf question between State regulators and the FCC. The ruling was a victory for long-distance companies in their quest to deal with a single national standard for network access. While the decision results in less authority for State regulators and makes it easier for long-distance phone companies to provide local phone service, it also overturned an FCC regulation that, in the Court's view, gave cheap and complete access to costly networks built by local telephone companies. The Court viewed FCC's rule considerations in this particular case not to have included adequate local market analysis. The Court's majority opinion included Justice Scalia's statements that the 1996 law was full of ambiguity and self-contradiction.

Another major battle is looming over access to cable television networks. Cable television's cables potentially could be used for voice communication and very fast Internet service (much faster than current standard phone lines) in addition to the traditional TV fare. It is a battle primarily with AT&T on one side and MCI WorldCom, America On-line, GTE, and the Baby Bells (US West, etc.) on the other. AT&T, in one of the major mergers of the past year, is buying Tele-Communications, Inc. (TCI), the country's largest cable television provider. AT&T wants to provide local phone service through TCI's network while denying access to the network by others. MCI WorldCom and other companies want access so that they also can provide voice and data services through the networks. They argue that since the law requires eventual access to local telephone company networks, it should also require access by competitors to cable television networks. AT&T argues that by opening up the networks, no competition will develop because no one will be able to recoup their investments. The FCC has indicated that they may not require AT&T to give its competitors access. The fight is moving to Capitol Hill. *[Peter Stenberg, 202-694-5366, stenberg@econ.ag.gov]*

Air Pollution Regulations Evolve

The Environmental Protection Agency (EPA) is moving forward with proposals to reduce unhealthy low-level air pollution, such as smog. In May 1999, EPA proposed regulations that would restrict pollution from cars, pick-up trucks, and sport-utility vehicles. Larger pick-up trucks and sport-utility vehicles previously did not have to meet as stringent standards as cars, but their popularity in recent years has made them a growing source of pollution. The new standards would require larger vehicles to meet the same standards as cars. As part of this action, EPA will also require a reduction in the level of sulfur in gasoline, as sulfur inhibits the performance of emission control devices.

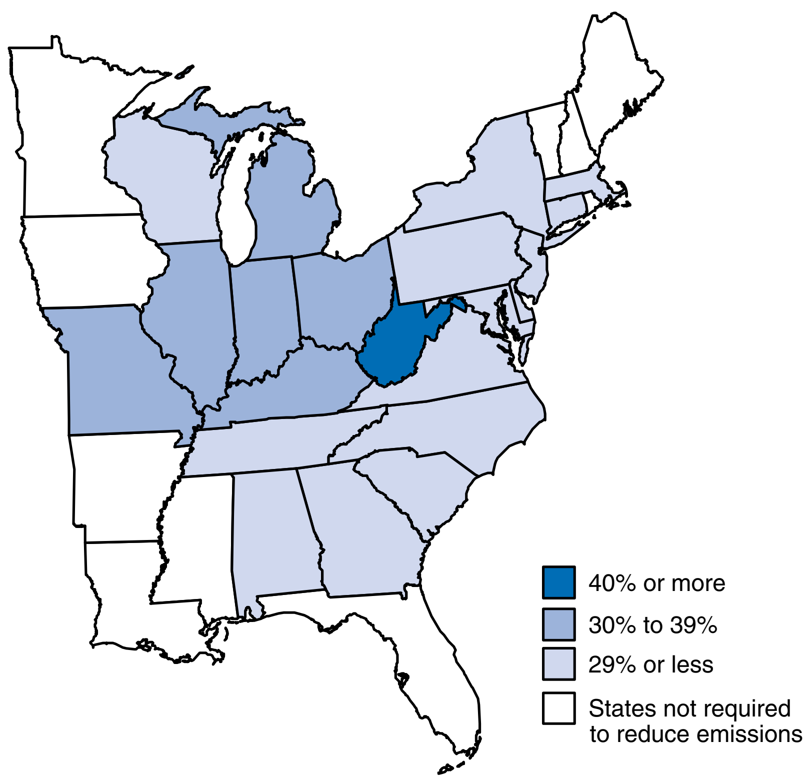
EPA is under court order to propose regulations for recreation vehicles including snowmobiles and all-terrain vehicles in September of 2000. Some rural recreation areas could be particularly affected. A recent study indicated that emissions from these vehicles are a significant contributor to air pollution. EPA has already adopted standards for personal watercraft, such as jet skis, as well as lawnmowers and farm tractors.

Recognizing that much of the smog (or ozone) in some parts of the country comes from power plants, and that the wind carries the pollution across State boundaries, EPA adopted a regionwide smog-reducing plan in September 1998 that covers 22 Eastern States and the District of Columbia (see fig. 1). The regulations require States, which regulate

Figure 1

Air pollution reductions required by Environmental Protection Agency in the Eastern States

Largest reductions are in the Midwest and West Virginia



Note: The District of Columbia will be allowed a small increase (+3%).
Source: Environmental Protection Agency.

electric utilities, to reduce pollution that contributes to smog. Although reductions from electric utilities will be most cost-effective, States will have flexibility to choose which sources to regulate. Controls must be in place by 2003 and reductions achieved by 2007. EPA estimates that the cost of electricity associated with this action will be only a fraction of the cost associated with utility restructuring. EPA is also proposing to use an interstate trading system that allows for the transfer of pollution credits to encourage early action while providing flexibility.

On May 14, 1999, the U.S. District Court of Appeals ruled EPA's new air quality standards for ozone and particulate matter, which were issued in July 1997, violated the constitution's delegation of powers. In a 2-1 vote, the court struck down the standards, arguing that this was an issue that was too important for Congress to delegate to a Federal agency. EPA will recommend that the Department of Justice appeal the decision of the court. However, EPA's regulations described in this report will proceed on schedule because they are based on the old 1-hour ozone standard.

Meanwhile, the global warming treaty continues to be debated in Congress. This treaty, signed in Kyoto, Japan in 1997, and followed up with the Buenos Aires accord in 1998, aims at reducing greenhouse gasses thought to cause global warming. The Buenos Aires accord would start enforcing the agreement by late 2000, with reductions required over a 13-year period. However, it is not clear yet whether Congress will ratify the treaty. This decision must be made by the end of 1999 for the United States to take part. *[Rick Reeder, 202-694-5360, rreeder@econ.ag.gov]*

Land Use and Natural Resource Regulations

In February 1998, the National Marine Fisheries Service (Commerce Department) proposed to protect steelhead trout and salmon in the Pacific Northwest (parts of Washington, Oregon, and northern California) by listing the species as either endangered or threatened. This would make it illegal to kill these fish or harm their habitats, and the fisheries service would develop a recovery plan that could restrict fishing, roadbuilding, mining, agriculture, and other activities within the region. Because the plan would apply to both urban and rural areas, it might also affect the use of fertilizer on lawns and gardens.

In February 1999, the Forest Service proposed a 2-year moratorium on hard rock mining in the mountain wildlife areas in Montana in an effort to protect threatened wildlife, including elk, deer, grizzly bear, and mountain goat. The restriction would apply along a 100-mile region called Montana's Rocky Mountain Front. The Forest Service is also considering making the restriction permanent in the region. This follows the restriction of oil and gas exploration for this region in September 1997.

In May 1998, the Interior Department proposed reducing the level of protection offered to 29 species of animals and plants, including the bald eagle, the peregrine falcon, eastern timber wolf, and others that were on the endangered species list. Some may be de-listed entirely, others placed on the threatened list. Most will still receive some level of protection either by Federal or State authorities. However, this action should make development easier in some places.

Legislation was enacted in November 1998 that affects the way the national parks will be managed. This law (P.L. 105-391) calls for the National Park Service to earn 8-percent royalties from concession sales. Lawmakers also extended a pilot program allowing parks to charge entrance fees and allowing most of the proceeds to be used in the park where they are collected. While some more ambitious fee collection proposals were not included (such as charging film companies fees to make movies in the parks), the new rules should help the National Park Service make much needed repairs and protect valuable wildlife and other amenities.

After Congress enacted legislation in 1998 imposing a moratorium on increasing oil and gas royalty fees on public lands, the Interior Department announced its intentions to increase such fees on June 1, 1999, the day the moratorium was to expire. The new formula would impose fees based on the price in the commodity market rather than based on individually negotiated deals between oil and gas producer and buyer. This change would result in $66 million in new revenues for the Interior Department. State and local governments in affected areas would also benefit from their share of the payments. However, the supplemental spending bill enacted in May 1999 extended the moratorium on applying the new fee structure beyond the June 1 date.

In June 1998, the Army Corp of Engineers proposed new rules concerning development of wetlands. The new rules would allow developers to fill up to 3 acres of most types of wetlands for certain purposes (building houses, malls, and some other developments), and 10 acres for “master planned” development activities, without detailed Federal review. Special restrictions would apply to rare wetlands. Regional offices would enforce these activity-based rules.

In February 1999, the U.S. Supreme Court upheld an Iowa Supreme Court ruling against Iowa’s “right-to-farm” law, which protected farmers from lawsuits by neighbors objecting to odors, noise, dust, and other perceived nuisances. The Iowa court’s reason for striking down the law was that it reduced the value of neighbors’ land, amounting to a government “taking” without compensation. The ruling appears to invalidate similar laws in other States that were enacted to fend off rural sprawl and the threat it poses for farming businesses. Without such laws, some State and local governments may be forced to turn to other approaches, such as tax incentives and zoning, to protect farmland from encroaching development. *[Rick Reeder, 202-694-5360, rreeder@econ.ag.gov]*

Some Bank and Credit Institution Regulations Have Changed

Beginning June 1, 1997, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 permitted interstate branching through bank mergers. Though Montana and Texas passed legislation opting out of interstate branching, at least one large banking firm used a loophole from earlier legislation to convert its Texas offices to branches of its main office in another State. While rural banks are typically too small to attract attention from the mostly large banks that actively participate in interstate banking, many rural banks and bank branches often already belonged to large banks that were taken over by even larger banks. Rural residents and businesses served by branches of distant banking firms may be concerned that those banks will neglect their credit needs. Regulations governing the Community Reinvestment Act (CRA) were revised earlier this decade in an attempt to make the Act both more effective and less burdensome. One change required large banks to provide geographic breakdowns of their lending to small businesses and to small farmers. Two years of these data are now available to help rural communities and activists evaluate the extent to which large banks lend to farmers and to small businesses in rural areas served by offices of those banks.

In 1998, the House narrowly passed a bill to revise the Glass-Steagall Act and related legislation which limits bank activity in the insurance and securities industries. However, the bill did not make it through the Senate, partly because of opposition to applying the CRA to new categories of financial firms that would be created by this legislation. Further, the Administration promised to veto any bill incorporating the Federal Reserve’s views on how to organize and supervise firms with enhanced financial products. The Federal Reserve argued that the safety of the Federal deposit insurance funds could be maintained only if insurance and securities activities were separated from traditional bank services by forcing banking firms to provide new financial services through affiliates of holding companies. But the Treasury Department believed that using bank subsidiaries to enter the insurance and security industries is good enough.

Both chambers of Congress are making financial reform a priority this year, but disputes have resurfaced, in addition to that between the Federal Reserve and Treasury. Some wish to push reform even further by allowing financial firms to own commercial firms, and conversely. Rural and other small banks fear that removing all Glass-Steagall barriers would concentrate economic power in a few giant, noncompetitive firms. The resulting institutions would offer a wide array of financial services, but some wonder whether they would neglect the farm and small business sectors in rural areas.

In 1998, the banking industry won a Supreme Court decision preventing what it perceives as unfair extensions of credit union common bond requirements. Congress quickly passed legislation to overturn that decision, but bankers are currently monitoring the situation closely as the National Credit Union Administration prepares regulations to implement last year's legislation. Bankers want to make sure that an individual credit union cannot easily serve large communities and large, unrelated groups of workers. Whether or not these concerns are addressed, there will not be a legal impediment preventing credit unions from having the opportunity to spread more widely in rural areas, since rural populations are too small for this to become an issue.

The Farm Credit Administration (FCA) is an independent agency of the Federal Government that regulates the Farm Credit System (FCS). For several years, FCA's board of directors has focused on regulatory reform to reduce business costs and barriers to customer-oriented operations while maintaining safety and sound operations. In 1998, FCA extended this focus by issuing a philosophy statement on intra-FCS competition and proposing a new rule with respect to chartered territories. In addition, a Federal appeals court overturned some customer eligibility regulations that were challenged by commercial bankers, but it affirmed others.

The philosophy statement on intra-system competition could lead to substantial changes in FCS structure and operations. This statement affirms the board's belief that unrestricted competition among FCS lenders will benefit eligible borrowers. The FCA board supports (1) the flexibility for associations to choose their source(s) of funding, (2) initiatives brought to the FCA by the FCS that allow institutions to become more efficient and relevant in the marketplace, (3) removal of geographical boundaries of FCS entities, (4) movement toward institutional structures that would encompass short-term lending, long-term lending, and Bank-for-Cooperatives-type lending, and (5) interpretations of the statutes that will enable FCS institutions to become more competitive.

The proposed rule with respect to chartered territories of FCS lenders is a first step in implementing this new policy. It would allow eligible borrowers to obtain credit and financial services from FCS lenders of their choice, regardless of the location of their residence or agricultural activity—effectively eliminating territorial restrictions on FCS lenders. However, each FCS lender would still be obligated to serve all eligible, creditworthy borrowers in its designated territory. Any FCS lender conducting substantial business beyond its designated territory would be required to adopt a board policy and a business plan addressing extraterritorial activities.

Previously, FCA had issued controversial final rules for eligibility and scope of financing which were challenged in court by the American Bankers Association and the Independent Bankers Association of America, who alleged the regulations conferred powers on the FCS not intended by Congress. In November 1997, a Federal Court dismissed the suit, but it was appealed. In January 1999, the Court of Appeals struck down regulations governing rural housing and farm-related businesses. The court ruled that the FCS could not finance rural homes for nonrural residents and that loans to farm-related businesses by those FCS lenders that only have authority to make long-term mortgage loans must be limited to financing land, buildings, equipment, and initial working capital. The court affirmed that other rules challenged by the banking organizations were consistent with statutory language and congressional intent, including rules for financing farm-related service businesses, lending to service cooperatives, processing and marketing loans, and eligibility of legal entities.

The overall effect of these changes on rural borrowers is likely to be small, especially in the next few years. Those who have been eligible to borrow from FCS lenders, especially those with large or specialized needs, may notice better service or lower interest rates if FCS lenders start competing with each other. Some borrowers who were formerly considered ineligible to borrow from the FCS will now be allowed to do so. *[Daniel Milkove, 202-694-5357, dmilkove@econ.ag.gov, and Robert Collender, 202-694-5343, rnc@econ.ag.gov].*

Other Changes Are Important for Rural Development

Statistical Changes. Several key changes in how statistics are collected and measured will have significant implications for many rural areas. In April 1998, the Bureau of Labor Statistics announced that it will use a revised cost-of-living adjustment (COLA) to correct for an overstatement in the cost of living that was built into the consumer price index (CPI). The revision will have the effect of reducing the annual increase in the index by about 0.8 percentage points. Because the CPI-based COLA is used to adjust Social Security payments, the revision will reduce Social Security payments beginning in January 1999. Over time, this reduction could make a significant difference in the economies of rural areas with high percentages of elderly people.

Another proposed statistical change involves the decennial census. The Bureau of the Census wants to use statistical sampling techniques to adjust for undercounting various places. The Supreme Court decided in January 1999 that sampling could not be used to reapportion the number of congressional seats after the decennial census. However, it did not rule on whether sampling could be used for other purposes, such as redrawing congressional districts or adjusting population estimates when determining State and local funding allocations in Federal programs. The use of sampling for such purposes could increase the level of assistance to rural and urban areas with substantial undercounted minority populations and decrease the level of assistance elsewhere, particularly where double-counting tends to take place. A recent General Accounting Office study found that some Southern and Western States (California, Texas, Arizona, Georgia, and Louisiana) would have received more than $100 million in additional Federal assistance had sampling techniques been used to allocate 15 large grant programs in the 1990's, while 23 States would have lost funds, with the largest loss in Pennsylvania.

The Census Bureau is also considering changing the way it defines rural/nonmetropolitan areas. Such definitions are often used in programs that target either urban or rural places, affecting eligibility and the level of assistance received. Significantly narrowing the definition of the term "rural" would reduce the rural share of the Nation's population, and it could change the way people think about rural America and the government assistance it receives.

Health Program Changes. In July 1998, Medicare payments to nursing homes were capped, reducing payments by $4.3 billion per year. The new system of payments promotes efficiency and effective care. However, because of diseconomies of scale, some small rural nursing homes find it difficult to make enough efficiency gains to cover the reduced payments. Another change that took place last summer was the President's decision to waive the so-called "100 hour rule" that limited Medicaid for two-parent families working over 100 hours a month. This waiver helps families retain health care when unemployed parents find jobs, hence it should particularly help in poor rural communities which generally have large numbers of working poor.

Changes Affecting Small Businesses. In June 1998, the Clinton Administration announced new bidding rules for Federal Government contracts that should benefit small minority-owned businesses. If such businesses can show that their share of Federal contract business is smaller than their share of the market, they can bid as much as 10 percent over the lowest bidder and win the contract. Small businesses and their workers could be more significantly affected by proposed rules by the Occupational Safety and Health Administration (OSHA). Current rules exempt small employers from recordkeeping and planned inspection requirements, but under the draft proposal, all businesses, regardless of size, would have to do regular workplace safety inspections. OSHA plans to provide a lot of Federal assistance to help small businesses design safe workplaces before any new regulations would be enforced.

New Waiver Guidelines. In April 1998, a presidential memorandum was sent to the heads of Federal agencies describing new guidelines for waivers that delegate authority to Federal employees to deviate from internal agency rules. Agencies are to approve or deny waiver requests within 30 days, and only the head of the agency can deny the waiver. Although the new guidelines do not apply to rules mandated by law, they should provide new flexibility to agency officials in the field; flexibility is often important in rural areas where conditions are much different than in the country as a whole. Waivers have also been touted as a key policy tool to help empower distressed communities, such as those participating in USDA's rural Empowerment Zone/Enterprise Community program. *[Rick Reeder, 202-694-5360, rreeder@econ.ag.gov]*